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<b>P.L., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-0663</b>
	)	<b>Issued: January 13, 2022</b>
<b>SOCIAL SECURITY ADMINISTRATION,</b>	)	
<b>NEWBURGH SOCIAL SECURITY OFFICE,</b>	)	
<b>Newburgh, NY, Employer</b>	)	
	)	

*Sean P. Lahiff, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

Before:  
 JANICE B. ASKIN, Judge  
 PATRICIA H. FITZGERALD, Alternate Judge  
 VALERIE D. EVANS-HARRELL, Alternate Judge

<sup>3</sup> The Board notes that, following the November 27, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$79,437.17, for the period February 27, 2006 through September 12, 2020, for which he was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

## **FACTUAL HISTORY**

On October 3, 2005 appellant, then a 66-year-old social insurance specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 20, 2005 he sustained a low back injury when he bent and twisted numerous times to activate a numbering machine, while in the performance of duty. On November 29, 2005 OWCP accepted the claim for lumbar sprain/strain. It paid appellant wage-loss compensation on the supplemental rolls commencing February 27, 2006 and on the periodic rolls commencing March 19, 2006.

On April 18, 2006 appellant underwent an OWCP-authorized right L3-4 hemilaminectomy and partial discectomy, and "L4-5 laminectomy with in situ fusion and bone graft."

On May 16, 2008 OWCP expanded its acceptance of the claim to include a lumbosacral disc herniation.

On October 12, 2009 appellant underwent an OWCP-authorized bilateral lumbar paravertebral injections.

On April 27, 2020 OWCP provided SSA a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. It listed the computation period as February 27, 2006 to present. On July 13, 2020 OWCP received the completed dual benefits calculation form, wherein on June 24, 2020 SSA calculated SSA benefit rates with a FERS offset and without a FERS offset from January 1, 2004 through December 2019. Beginning January 1, 2004, the SSA rate with FERS was \$520.70 and without FERS was \$276.60. Beginning February 1, 2004, the SSA rate with FERS was \$1,215.70 and without FERS was \$971.60. Beginning July 1, 2004, the SSA rate with FERS was \$1,222.70 and without FERS was \$971.60. Beginning December 1, 2004, the SSA rate with FERS was \$1,255.70 and without FERS was \$997.80. Beginning January 1, 2005, the SSA rate with FERS was \$1,308.60 and without FERS was \$997.80. Beginning December 1, 2005, the SSA rate with FERS was \$1,362.10 and without FERS was \$1,038.70. Beginning January 1, 2006, the SSA rate with FERS was \$1,418.70 and without FERS was \$1,038.70. Beginning December 1, 2006, the SSA rate with FERS was \$1,465.50 and without FERS was \$1,073.00. Beginning January 1, 2007, the SSA rate with FERS was \$1,476.10 and without FERS was \$1,073.00. Beginning December 1, 2007, the SSA rate with FERS was \$1,510.00 and without FERS was \$1,097.60. Beginning December 1, 2008, the SSA rate with FERS was \$1,597.50 and without FERS was \$1,161.20. Beginning December 1, 2011, the SSA rate with FERS was \$1,655.00 and without FERS was \$1,203.00. Beginning December 1, 2012, the SSA rate with FERS was \$1,683.10 and without FERS was \$1,223.40. Beginning December 1, 2013, the SSA rate with FERS was \$1,708.20 and without FERS was \$1,241.60. Beginning December 1, 2014, the SSA rate with FERS was \$1,737.20 and without FERS was \$1,262.70. Beginning December 1, 2016, the SSA rate with FERS was \$1,742.40 and without FERS was \$1,266.50. Beginning December 1, 2017, the SSA rate with FERS was \$1,777.20 and without FERS was \$1,291.80. Beginning December 1, 2018, the SSA rate with FERS was

\$1,826.90 and without FERS was \$1,328.00. Beginning December 1, 2019, the SSA rate with FERS was \$1,856.00 and without FERS was \$1,349.10.

On August 4, 2020 OWCP received a second completed FERS/SSA dual benefits calculation form, wherein on July 16, 2020, SSA calculated SSA benefit rates with a FERS offset and without a FERS offset from January 1, 2004 through December 2019. Beginning January 1, 2004, the SSA rate with FERS was \$520.70 and without FERS was \$971.60. Beginning December 1, 2004, the SSA rate with FERS was \$1,255.70 and without FERS was \$997.80. Beginning December 1, 2005, the SSA rate with FERS was \$1,362.10 and without FERS was \$1,038.70. Beginning December 1, 2006, the SSA rate with FERS was \$1,465.50 and without FERS was \$1,073.00. Beginning December 1, 2007, the SSA rate with FERS was \$1,510.00 and without FERS was \$1,097.60. Beginning December 1, 2008, the SSA rate with FERS was \$1,597.50 and without FERS was \$1,161.20. Beginning December 1, 2011, the SSA rate with FERS was \$1,655.00 and without FERS was \$1,203.00. Beginning December 1, 2012, the SSA rate with FERS was \$1,683.10 and without FERS was \$1,223.40. Beginning December 1, 2013, the SSA rate with FERS was \$1,708.20 and without FERS was \$1,241.60. Beginning December 1, 2014, the SSA rate with FERS was \$1,737.20 and without FERS was \$1,262.70. Beginning December 1, 2016, the SSA rate with FERS was \$1,742.40 and without FERS was \$1,266.50. Beginning December 1, 2017, the SSA rate with FERS was \$1,777.20 and without FERS was \$1,291.80. Beginning December 1, 2018, the SSA rate with FERS was \$1,826.90 and without FERS was \$1,328.00. Beginning December 1, 2019, the SSA rate with FERS was \$1,856.00 and without FERS was \$1,349.10.

On August 12, 2020 OWCP requested that SSA clarify why the August 4, 2020 calculation form did not include the January 1, 2006 rate increase as set forth in the July 13, 2020 calculation form. SSA responded on August 19, 2020 that the August 4, 2020 calculation was correct and that OWCP should disregard the July 13, 2020 calculation form.

In a FERS offset overpayment calculation form dated September 23, 2020, OWCP used the information provided by SSA in the July 13, 2020 dual benefits calculation form to calculate the 28-day FERS offset for the relevant periods, and calculated a total overpayment in the amount of \$79,437.17. It found that, during the period February 27 through November 30, 2006, appellant received an overpayment of compensation in the amount of \$3,470.11. During the period December 1 through 31, 2006, he received an overpayment in the amount of \$401.13; during the period January 1 through November 30, 2007, appellant received an overpayment in the amount of \$4,483.53; during the period December 1, 2007 through November 30, 2008, he received an overpayment in the amount of \$4,975.99; during the period December 1, 2008 through November 30, 2009, appellant received an overpayment in the amount of \$5,249.98; during the period December 1, 2009 through November 30, 2010, he received an overpayment in the amount of \$5,249.98; during the period December 1, 2010 through November 30, 2011, appellant received an overpayment in the amount of \$5,249.98; during the period December 1, 2011 through November 30, 2012, he received an overpayment in the amount of \$5,453.80; during the period December 1, 2012 through November 30, 2013, appellant received an overpayment in the amount of \$5,531.55; during the period December 1, 2013 through November 30, 2014, he received an overpayment in the amount of \$5,614.58; during the period December 1, 2014 through November 30, 2015, appellant received an overpayment in the amount of \$5,709.64; during the period December 1, 2015 through November 30, 2016, he received an overpayment in the amount of \$5,725.29; during the period December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$5,726.49; during the period December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$5,840.80; during the period December 1, 2018 through November 30, 2019, he received

an overpayment in the amount of \$6,003.25; and during the period December 1, 2019 through September 12, 2020, appellant received an overpayment in the amount of \$4,796.05.

On September 29, 2020 OWCP issued a preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$79,437.17, for the period February 27, 2006 through September 12, 2020, because the SSA/FERS offset was not applied to payments for this period. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method, and advised him that he could request a waiver of recovery of the overpayment. It further requested financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP advised appellant that it would deny waiver of recovery of the overpayment if he failed to furnish the requested financial information within 30 days. It provided an overpayment action request form and further notified him that, within 30 days of the date of the letter, he could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a prerecoument hearing. Appellant did not respond.

By decision dated November 27, 2020, OWCP finalized the September 29, 2020 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$79,437.17, for the period February 27, 2006 through September 12, 2020, because OWCP had failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to federal service and that he did not have actual knowledge of the calculation error. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA as he had not responded to the request for financial information. OWCP required recovery of the overpayment in full.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>5</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>6</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>7</sup>

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *S.S.*, Docket No. 19-1945 (issued March 25, 2021); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>7</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period February 27, 2006 through September 12, 2020, for which he was without fault, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

Appellant received SSA age-related retirement benefits while also receiving FECA wage-loss compensation, without an appropriate offset, for the period February 27, 2006 through September 12, 2020. As noted above, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> Therefore, fact of overpayment has been established for the period February 27, 2006 through September 12, 2020.

The Board further finds, however, that this case is not in posture for decision with regard to the amount of the overpayment. SSA provided SSA/FERS offset calculations dated July 13, and August 4, 2020, which listed differing benefit amounts. On August 12, 2020 OWCP requested that SSA clarify why the August 4, 2020 dual benefits calculation form did not include the January 1, 2006 rate increase as set forth in the July 13, 2020 dual benefits calculation form. Although SSA indicated in an August 19, 2020 response that OWCP should rely on the August 4, 2020 dual benefits calculation form, OWCP instead based its overpayment determination on the July 13, 2020 dual benefits calculation form that SSA noted was incorrect. The Board finds, therefore, that the case is not in posture for decision with regard to the amount of the overpayment in question.<sup>9</sup>

The case will be remanded to OWCP for recalculation of the amount of the overpayment, to be followed by a new preliminary determination of overpayment and a *de novo* overpayment decision.<sup>10</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period February 27, 2006 through September 12, 2020, for which he was without fault, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. The Board further finds, however, that this case is not in posture for decision regarding the amount of the overpayment.<sup>11</sup>

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<sup>8</sup> See *id.*; *M.R.*, Docket No. 20-0427 (issued October 30, 2020). See also *N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>9</sup> *D.D.*, Docket No. 20-1172 (issued September 29, 2021).

<sup>10</sup> *Id.* *Danny E. Haley*, 56 ECAB 393 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Action*, Chapter 6.200.1 (September 2018).

<sup>11</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 15, 2021 merit decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 13, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board